No. 9(1) 82-8 Lab./3031—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M|s Apco Industries 21-5 km Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 450/80, 435/80, 449/80, 436/80

between

SHRI ROSHAN RAI, SWAMI NATH, SINGHASAN, RAM SARUP, WORKMEN AND THE RESPONDENT-MANAGEMENT OF M/S. APCO INDUSTRIES, 21-5 K. M., MATHURA ROAD, FARIDABAD.

Shri Mohit Kumar Bhandari, for the workman

Shri R. Gogna, for the respondent-management.

AWARD

These reference Nos. 450, 345, 449 and 436 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID|FD|49781, dated 17th September, 1980, 48749, dated 12th September, 1980, 49087, dated 15th September, 1980, and ID|FD|48742, dated 12th September, 1980, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Roshan Rai, Swami Nath, Singhasan, Ram Sarup, workmen and the management of M|s. Apco Industries, 21-5 K.M., Mathura Road, Faridabad. The terms of the references were:—

> Whether the termination of services of Shri Roshan Rai, Swami Nath, Singhasan, and Ram Sarup was justified and in order? If not to what relied are they entitled

After receiving these references, the notices were served on the parties. The parties appeared and filed their pleadings. The case of the workmen according to their demand notice and claim statement is that they were employed as under :—

Sr. No.	Name of the workman	Designation	Date of appointment	Pay
1.	Shri Roshan Rai	Drillman	1-4-77	Rs. 260/-
2.	Shri Swami Nath	Do	5-4-76	Rs. 260/-
3.	Shri Singhasan	Helper	1-6-77	Rs. 200/-
4.	Shri Ram Sarup	Drillman	1-4-77	Rs. 250/-

and working smoothly without any complaint. There was a registered union in the factory which the respondent did not like and the workman were the member of the union. The owner of the respondent used to change their name after four years to avoid to give facilities to the old workmen and they started the company with the name of Sen & Co., after that they started Sen Sen Udyog in the year 1975 and in the April, 1976 they changed the name from Sen Sen Udyog to Apco Industries. They re-employed the workmen who were working in the previous factory. The respondent gave a notice for retrenchment and did not care section 2(oo) of the Industrial Disputes Act, 1947 and section 25-G and H and removed the workmen on 22nd February, 1980 without paying any compensation for their service or one month notice pay. The complaint for which sent by the union to the Haryana Government on 24th January, 1980 and the Government demanded the report,—vide letter, dated 7 h [illegible] v. 1980 from the respondent. The respondent was not ready with the reply for the complaint given by the union. So the respondent displayed a notice for closing the factory, for which the workman union send the complaint to the Haryana Government on 7th March, 1980 on which the Haryana Government sent the same to the Deputy Labour Commissioner for enquiry and discussion with the respondent-management. The Deputy Labour Commissioner arrived at a settlement on 11th April, 1980 and the responednt accepted not to close the factory, but in the settlement the respondent refused to accept 8 persons who were retrenched and in this way violated the section

2(oo) and 25-F, 25-FF and 25-G and the workmen were terminated due to the union activities and without paying any compensation to the workmen and without having there record of the seniority list of the workmen. The junior are still working in the factory and the persons who joined the services at the start of the factory were retrenched. The workmen were illegally terminated by the respondent and so they are entitled for the re-instatement with back wages and continuity of service.

The respondent raised a preliminary objections in his written statement that the retrenchment of the claimant workmen have been bonafidely effected, the claim if any is a matter of arithmetical calculations and does not constitute any Industrial Dispures and the Government has committed an error of law by converting the monetary claim into a regular reference, which is bad in law, and deserves summary dismissal. The present dispute does not constitute an Industrial Dispute in as much as no demand notice was served on the management before taking the dispute to the Government Machinery. The workmen were working as helper and not as stated in the demand notice. The date of joining the service by the workmen is not disputed. The respondent were never against the union. They have always encouraged a healthy and constructive trade union and it is wrong that the management ever changed the name of the firm. The mention of the fanciful period of every four years in nothing but a cheap concoction on the part of the claimant. The respondent factory was established and started in the month of April, 1976 and since that it is working with the same name without any change. The respondent had no concern with M/s. Sain Sons Udyog. The workmen were retrenched on 22nd February, 1980 with all facilities given in section 2(oo) or 25-G of the Industrial Dispures Act. No workmen junior to the workmen claimant were retrenched while retrenching the other workmen. Notice, dated 21st January, 1980 were given to the workmen which is admitted by the workmen. It is admitted that the respondent displayed the notice of closure on 29th February, 1980 and the copies were sent to the different authorities and it is also admitted that the respondent had agreed to the settlement dated 11th April, 1980 and to continue the manufacturing activities for some time more by taking back the workmen, who were affected by the closure notice. The factory is still working under heavy losses due to lack of orders and financial problems. It is also denied that the victimisation of the workman is due to the trade union activities, but it was due to shortage of order during that period and the management was being burdoned with heavy losses. The retrenched workmen shall be given preference in re-employment as and when their vacancies are filled henceforth. The workmen were lawfully retreached. Therefore, no question of being taking back on duty and back wages of service, does not arise.

On the pleadings of the parties, only one issue as per reference was framed:—

(1) Whether the termination of services of the workmen were proper, justified and in order? If not, to what relief are they entitled ?

All the above cases were consolidated on the request of the both the represensttive of the parties and it was ordered that the evidence shall be recored in Reference No. 450 of 1980. My findings on issue is as under:—

ISSUE NO. 1 :—

On this issue the respondent's representative argued that the workmen were appointed, —vide their applications Ex. M-1, M-2, M-3 and M-17. The day of the joining and appointment is given on this applications forms on which the applicants have marked their thumb impression and signature at point "A" and "B", which is also admitted by all these workmen. They were appointed in the year 1976-77 as mentioned above. There was shortage of order and they decided to retrench these workmen and the notice of retrenchment was sent on form 'P' to the Government which is Ex. M-7. The seniority list was prepared, which is Ex. M-8 and one month's notice were given to these workmen which is also admitted by them in their evidence, which are Ex. M-4, M-5 and M-6 on 22nd February, 1980. No workman came to collect their dues in the factory so notice was prepared which Ex. M-9 which was sent to the

Government,—vide Ex. M-9/1 through UPC. Ex. M-10 was also prepared and displayed on the notice board and sent to the Labour Commissioner and other labour authorities,—vide Ex. M-10/1 that these workmen have not turned up to take their dues. Due to bad position of the respondent factory the respondent-management decided to close the factory in the month of March, 1980. The notice dated 29th February, 1980 which is Ex. M-14, which displayed on the Notice Board and sent to the Labour authorities. Another general notice for closing the factory and removing all the workmen was also prepared which Ex. M-15 which was displayed on the notice board and sent to the Labour Authorities. The union made the complaint which was sent to the Deputy Labour Commissioner and there was a settlement before the Deputy Labour Commissioner for not closing the factory which is Ex. M-16. The settlement bears the signature of Shri Swami Nath and Shri Ram Sarup, the claimant in the case. It was settled in this settlement that eight retrenched workmen reserve their right to raise the demand for their reinstatement and other workmen were called on the duty. After that the money orders sent to the workmen and the same returned with the remarks "refused". Ex. M-11 and Ex. M-11/1 are the money order receipts of Shri Ram Sarup which were also returned to the workmen were duty bound to collect their dues as mentioned in the letter Ex. M-4, M-5 and M-6. The money order Ex. M-12 was sent to Shri Singhasan which was also returned through report Ex. M-12/1. The representative of the respondent cited LLJ-1970-II-page 430 at para 14 which is as under:—

> "Organisation of business and the arrangement for work force, is the discretion of employer."

and LLJ-1973-I-Page-306, which is as under:—

> "Notice accompanied by calculation for payment given the reasonable inference that there is a compliance of section 25-F. Even if the office of the cashier is locked at a distance."

and LIC-(14), (May) page 697 which is as under :—

> "Actual tender of compensation is not necessary genuine offer is sufficient-notice displaying that compensation will be paid on the termination-held sufficient compliance with section 25-F."

and RCR-1970-II-Page 607-page 609 and 610 which is as under:—

> "In case of refused" registered letters, there is a presumption of correctness attached with the report of the postman.

to support his case. He further argued that Shri S. K. Verma, Manager of the respondent concerned came as MW-1 to support his case who has stated in his statement that these workmen were retrenched after complying all the facilities given in the law and the workman sent ntheir retrenchment compensatio through money orders which were received back with a postal remarks "refused". He further stated in his statement that after their retrenchment no helper has been employed by the respondent and it is a case of retrenchment because the respondent management had no work for these workmen and it was going under a heavy losses.

The representative of the workman argued on this issue that these workmen were old employees of the respondent and has alleged in their demand notice the respondent was in the habit of terminating the old employees or changing the name of the concern which is supported by the evidence of the workman Shri Swami Nath as Ex. W-1. who has stated that he was working in the Sain Sons Udyog from 1973-74 which was in the same premises where the present Apco Industries situated and the owner of that concern was the same of the Apco Industries, the machinery is the same and only change the name of the firm and they re-employ the old employee in their factory. Now they have started another name in the same factory with the name of P. Sons in which they were employed for different works. It is also a concern of the same management in the same premises and with the same machine. It is their tactics to avoid the old workers for their benefits. He further argued that the same fact is corroborated by other witness of the workman as WW-2 Shri Roshan Rai and Ram Sarup and Singhasen. In every case of retrenchment the management is required to comply with the mandatory provisions of Section 25-F, G and H of the Industrial Disputes Act, 1947. Section 25-F which is not merely an empty formality in

no uncertain terms declared the condition precedent to retrenchment and in very bold terms it lays down three conditions :—

(a) One month's notice in writing indicating the reasons.

(b) Payment of compensation which is equivalent to 15 days average pay for every complete year of service.

(c) Notice in the prescribed manner to the appropriate Government.

In the instance case it has been admitted by the workman that they have received one month notice pay from the respondent but it remains to be justified whether in the notice of retrenchment the management has clearly come out with the reasons of the retrenchment. The only reason stated by Shri S. K. Verma as MW-1, the sole witness of the respondent is scarcity of orders for supplying the materials, but the management has not come out with any evidence that there was scarcity of orders and it is not the case of the management that the scarcity or orders was due to the general trend of the market. So the statement of the witness cannot be believe in the absence of any valid reasons. If the management have scarcity of order there must be less production in the factory and the management must have paid less taxes like excise duty, sales tax etc. The management has not given any documentary or oral evidence which can prove that there was scarcity of orders with the management. On the contrary the sole witness of the management during the cross examination has contradicted by stating that he cannot say whether there was shortage of orders when these workmen were retrenched and it is not in his knowledge. The manager of the respondent reply in this way says that there was no scarcity of order with the managment. If there was any scarcity of orders, he have given a clear reply that there a scarcity of order in the factory at the time of retrenchment of these workmen. Absence of any evidence and the above statement of the manager of the respondent proves without doubt that there was no scarcity of orders and even if there was any the management has failed to establish it, with any documentary or oral evidence. He further argued that it is established fact as admitted by the respondent in its written statement tha hese workmen were employed in the year 1976-77 and it is established fact that they were the old employees. The respondent prepared a list of workman without showing how many workmen were working in the factory at the time of retrenchment and there is no evidence came before this court how many workmen were working at the time of retrenchment. If I say there was more than 100 workmen were working in the factory then there is nothing against it with the respondent so say from the file that there were not more than 100 workmen working. There is no on the record that how much workmen were working in the factory. The respondent prepared the seniority list of only 21 workmen and as stated by the respondent witness MW-1 in his cross examination that the seniority list was framed for all the workers of the respondents concerned irrespective of the categories in which the workers were retrenched or not, shows how the respondent has acted in preparing the list for the retrenchment, which cannot be legally appreciated. He further argued that according to law the respondent should have prepared the accounts of this retrenched workmen and according to those amounts the money should be covered at the time of retrenchment. The respondent has failed to prepare the accounts of these workmen as no accounts is produced in the Court for sending the money orders of the respondent. The money sent to the workmen were not according to the law as 15 days average pay on 22nd February, 1980, for each service year and one month notice pay and earned leaves amount was not properly sent to the workman. The respondent sent the money orders on the wrong address and the workman did not receive any information about the money orders. The respondent has not asked about the address on the money order and there is no question of sending the money order on a proper address which were received back. The money should have been offered at the time of retrenchment and the workman used to come before the factory gate daily as they have made the complaint to the Labour Commissioner and Labour Authorities about the retrenchment and about the closure of the factory. The respondent displayed a notice on 29th February, 1980 for the closure of the factory for which the union of the workman sent the complaint to the Labour Commissioner, Haryana which was sent to the Deputy Labour Commissioner and there was a settlement on that complaint which is Ex. M-16 produced by the respondent and agreed and admitted by them and there are the signatures of these workmen. They have

not asked the Deputy Labour Commissioner at the time of settlement and hey were in the office in singing the settlement before he Deputy Labour Commissioner for the amount of compensation. It shows that the respondent has failed to offer or send the money of compensation to the respondent and thus violated the provision of Section 25-F and 25-G and H of the Industrial Disputes Act, 1947. He further argued that as stated by the workman WW-1, 2, 3 and 4 that the respondent has employed the workmen in the B. Sons and Co., which is working on the same machine and with the same management when the workmen were retrenched to avoid the workmen to give the benefits of old employees and because the workmen were the active member of the union and raised demand for the workman and which was not liked by the respondent-management. The statement of these workmen were never rebutted even in his cross examination and its true position in which the workmen were retrenched illegally, for achieving the aim of the respondent. He further argued that citation produced by the respondent before this Court are not applicable at all in this case as discussed above. So this was the termination of the workmen and not retrenchment and these orders were illegal and not justified under the law.

After hearing the arguments of both the parties, and carefully going through the file, I am of the view that the arguments put forwarded by the workman has some weight. The respondent has not complied all the mandatory provisions of the law for retrenching these workmen, and when all the mandatory provisions were not complied with, then it is illegal and un-justified termination. The case of the workman is proved as they raised the demand notice. The fact which were given in the demand notice were the same what admitted by the respondent in his written statement and in the statement of the respondent witness MW-1, Shri S. K. Verma, Manager of the respondent concerned. So the arguments of the representative of the workmen seems to be very reasonable and I agreed with it so the workmen are entitled for their reinstatement with full back wages and continuity of service. No order as to costs.

This be read in answer to these references.

Dated: 12th March, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 672, dated the 19th March, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

The 28th June, 1982

No. 9(1)82-6Lab./5769.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Universal Steel and Alloys Ltd., 12/6, Mathura Road, Faridabad (ii) Pritam Singh, contractor; (iii) Srri Ganeshi Lal, contractor; (iv) Dev Kishan, contractor (v) Sham Lal, contracor, v/o Universal Steel and Alloy, 12/5, Mathura Road, Faridabad,

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 459 of 1980

between

S/SHRI RAM BILAS AND 23 OTHER WORKMEN AND THE MANAGEMENT OF M/S UNIVERSAL STEEL & ALLOYS LTD., 12/6, MATHURA ROAD, FARIDABAD. (ii) SHRI PRITAM SINGH, CONTRACTOR, C/O M/S UNIVERSAL STEEL & ALLOYS LTD., 12/6, MATHURA ROAD, FARIDABAD; (iii) SHRI GANESHI LAL, CONTRACTOR, C/O M/S UNIVERSAL STEEL & ALLOYS, 12/5, MATHURA ROAD, FARIDABAD, (iv) SHRI DEV KISHAN, CONTRACTOR, C/O M/S UNIVERSAL STEEL & ALLOYS, 12/5, MATHURA ROAD, FARIDABAD, (v) SHRI SHAYAM LAL, CONTRACTOR, C/O M/S UNIVERSAL STEEL & ALLOYS, 12/5, MATHURA ROAD, FARIDABAD.

Shri Yoginder Singh & Shri Mohit Kumar Bhandari, for the workmen.

Shri J. S. Saroha, for the respondent management No. I.

S/Shri Pritam Singh & Shayam Lal, Contractors respondent No. II & V in persons.

S/Shri P. N. Gupta & Keshav Farwah, for the Contractors respondent No. 2 to 5.

AWARD

This reference No. 459 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/SPT/50526, dated 22nd September, 1980 under section 10(i) (c) of the Industrial Disputes Act, 1947, for adjudication of the dispute existing between S/Shri Ram Bilas and 23 others, workmen and the respondent-management of M/s Universal Steel & Alloys Ltd., 12/6, Mathura Road, Faridabad, (ii) Shri Pritam Singh Contractor, (iii) Shri Ganesh Lal, Contractor (iv) Shri Dev Kishan, Contractor, (v) Shri Shayam Lal, Contractor, c/o M/s Universal Steel & Alloys, 12/5, Mathura Road, Faridabad. The terms of the references were :—

> Whether the termination of services of the workmen of S/Shri Ram Bilas, Dharam Pal Singh, Sugriv, Kailash, Hukam Singh, Chir Godhan, Salam, Rajinder, Kaddu Das, Ijhai Lahek, Shanker Parshad, Jitani, Ram Sarup, Dukhi, Sita Ram, Joginder, Hari Yadav, Gajinder Singh, Mashtapha Kha, Lal Babu Saha, Ram Lal, Eliyash & Vijay Bhushan was justified and in order ? If not, to what relief are they entitled ?

After receiving this reference, notices were sent to the parties. The parties appeared and filed their pleadings.

The case of the workmen according to the demand notice is that they were employed by the respondent Company and they were terminated on 15th May, 1979 due to the union activities. So they are entitled for the re-instatement with full back wages and continuity of services. This demand notice was given by twenty four (24) workmen against the 5 (five) respondent management including four contractors. The representative of the workmen appeared on behalf of 16 workmen other were not come in the Court.

The case of the respondent-management No. 1, M/s Universal Steel & Alloys Ltd., 12/6, Mathura Road, Faridabad is that the claimants were never employed by them. They were employed by the Contractors respondent No. 2 to 5 on the term and conditions mutually acceptable by and between them. So there is no Industrial Dispute between respondent No. 1 and the claimants. There was a mutually accepted valid contract between the Company and the Contractors respondent No. 2 to 5 and they were responsible to employ necessary staff for fulfilling the terms and conditions of the contract. The respondent No. 1 is registered with Labour Department, Government of Haryana to employ contract labour as provided under the provisions of the Contract Labour (Regulation and Abolition Act, 1970) read with Haryana Rules. There exists no employer & employee relationship between the claimants and respondent No. 1. So they have wrongly made a party. The claimants had raised a demand notice against the respondent No. 1 and the Government had not found the demand against the respondent No. 1 proper and had not considered the matter fit for reference. The claimants did not file the claim statement in the Court and the demand notice is not clear to reply on merit. Since the claimants were not employed by the respondent No. 1 and their services could not be terminated by them. There was no Union in the factory and the respondent had no knowledge of the membership of the union. The respondent Company did not signed any settlement with the claimants. So the reference may be dismissed against the respodnent No. 1.

The Contractors S/Shri Pritam Singh, Ganeshi Lal, Dev Kishan and Shayam Lal also filed their written statements. According to the written statement of Shri Shayam Lal, Contractor is that there is no Industrial Dispute as defined under the Industrial Disputes Act and the reference is bad in law and the Court had no jurisdiction to decide the reference against the Contractors respondent No. 2 to 5. The claimants never raised any valid demand about the dispute upon the answering contractor before the Conciliation proceedings nor the Conciliation Officer never gave any formal intimation of his intention to commence to conciliation proceedings as required under Chapter III Rule 10 of the Industrial Disputes (Central) Rules, 1957 hence the reference **qua** the contractor is bad, premature without following the correct procedure and the answering contractor cannot be impleaded as party before the Hon'ble Court at this stage and it cannot be called the real dispute between answering contractor and workmen. There is no relationship of master and servant between the claimants workmen and the

answering respondent. They were not appointed or paid by the answering contractor and their services have never been terminated by them. The reference is defective, vague because of lack of full particulars and bad in law and liable to be rejected. The respondent No. 1 is the employer of the claimants. The contractor of the answering respondent No. 2 to 5 was effective from 1st January, 1979 up to 31st December, 1979 only subject to the work being done to the Company's satisfaction. The Contractor Shayam Lal has denied that claimant Shri Ram Bilas worked with him for years together. He was employed by the Company through the answering contractor with effect from 1st January, 1979. The workman used to work at the factory premises, under supervision and control of respondent No. 1. All the workers used to work under the direct control and supervision of the Company. The workman Shri Ram Bilas carried out contractual job for some period and thereafter he left the job with effect from 10th May, 1979 without intimating the contractor and the Company and started working elsewhere.

Shri Dev Kishan, Contractor has stated in his written statement that the claimants workmen shown at Serial No. 16 to 24 in Annexure 'A' to claim were employed by the Company through the answering contractor with effect from 1st January, 1979. All the workers used to work under direct control and supervision of the Company and the arrangement between the answering contractor and the Company to employ sufficient labour by the contractor was a mere camouflage and as such, there was no relationship of employer and employee between the answering contractor and workmen. The claimants at Sr. No. 16 to 24 carried out contractual job for some period and thereafter they left the job w.e.f. 10th May, 1979 without intimating the contractor and the company.

Shri Ganeshi Lal, Contractor stated in his written statement that the claimants who have been shown at Serial Nos. 3, 6, 7 to 12 in Annexure 'A' were employed by the Company through the answering contractor w.e.f. 1st January, 1979 and they carried out contractual job for some period and thereafter they left the job w.e.f. 10th May, 1979 without intimating the contractor and the company.

Shri Pritam Singh, Contractor replied in his written statement that none of these workmen shown in the Annexure 'A' were ever employed through the answering contractor and there is no relationship of master and servant between hese workmen and the answering contractor.

The representative of the workmen filed the rejoinder on behalf of 18 workmen after filing the written statement. On the pleadings of the parties, the following issues were framed :—

(1) Whether the relationship of employer and employee ever existed between the parties ? If so, to what effect ?

(2) Whether the termination of services of the workmen is proper, justified and in order ? If not, to what relief are they entitled ?

(3) Whether it is a case of self abandonment of service ? If so, to what effect ?

(4) Whether the claimants are fainfully employed ? If so, to what effect ?

(5) Relief ?

Issue No. 1 will be treated as preliminary issue and will be decided first. At the time of framing the issues ,the representative of the workmen made a statement in this Court that none of the workmen was employed by the Contractors as shown in the reference. So they may be deleted from the list of the respondents as there is no relationship of employer and employee existed between the claimant-workmen and conractors respondent No. 2 to 5. Before starting the evidence of the parties, I thought that the parties mentioned in the reference can not be belated in this way and I again ordered to sall the respondents No. 2 to 5 and they were sent the registered notices to this effect. The respondents No. 2 to 5 came in the Court after receiving the notices. They attended the court on 18th September, 1981 and 25th September, 1981 and absented themselves on 30th September, 1981. So ex parte orders were passed against them on 30th September, 1981.

My findings on issues are as under:—

ISSUE NO. 1 :

Issue No. 1 is that whether the relationship of employer and employee ever existed between the parties ? If so, to what effect. The representative of the workmen argued on this issue that these workmen were employed by the respondent No. I as stated by Shri Dukhi Chaudhry as WW-1, Vijay Bhushan as WW-2, Lal Babu Saha as WW-3, Sita Ram as WW-4 and Sh. Gajinder as WW-5 in their statement in the Court. The workmen have stated in their statement that they were employed by the respondent No. I and they are working in the factory for the last so many years. The respondent No. I deducted the ESI and Provident Fund from the wages paid by the respondent. He further argued that these workmen appeared in the court have denied that they are employed by the Contractors. The workmen did not mention any name of the Contractors in their statement before this Court.

The witnesses of the respondent No. I, Shri Raj Kumar, Personnel Officer as MW-1, Shri Munna Shah, Time Keeper as MW-3 have admitted that the ESI and Provident Fund numbers are of the same which are allotted to the respondent No. I clearly shows that they were employed of the respondent No. I and not the Contractors. He further argued that even the Contractors of the respondent No. I have stated in the written statement that the claimants were employed by the respondent No. I and they were paid by him makes the case very clear that they were employed of the respondent No. I. He further argued that the respondent No. I cannot say that they are employees of the Contractors because under the Contract Act and the Company should be registered with the Labour Department which is not established in the court. The documents regarding the registration were not proved properly to establish this fact that the Company was registered with the Labour Department for the Contractors. Moreover the contractors also required to have the Licence for the contract labour. Under the Act no licence of the contractors was produced in the court. Though these contractors working with the respondent No. I were employed more than 20 workers. He further argued that only respondent No. I is the employer of the workmen as he was the only party come before the Conciliation Officer for conciliation proceedings and the Contractors are not the party before the Conciliation Officer. The workmen in their statement have stated that they used to get their pay on the register from the Company and their ESI and provident fund deductions are made by the respondent No. I. The workmen are the members of the Union and their demands for benefit of the workmen which the respondent No. I did not like. So all the 24 workmen were stopped at the gate of the Company due to the trade union activities on 10th May, 1979 and terminated the services. The representative of the workmen stressed more only on the ESI and provident fund statement of the Company which proved the relationship of employer and employee between the workmen and the respondent No. I.

The representative of the respondent No. I argued on this issue that from very beginning of the Company, the Company have the Contractors for the contractual job as stated by Shri Raj Kumar, Personnel Officer as MW-1. The witnesses have stated in their statements that Ex. M-6 to M-9 are the settlement between the Contractor's workmen and in these settlements the clauses 4 and 6 are very clear as under:—

> You will be independent to take decisions regarding execution of the contract job. To allot job to the staff working under you will be your responsibility. Similarly you will guide and check the work done by your employees. Your employees will report to you for all practical purposes and supervision of job, workmen and their discipline will be your responsibility.
>
> That any penalty, fine or dues becoming payable by you in the event of non-compliance of Governmental obligations, will be borne by you and the Company will not in any respect be answerable for the same.

These settlements are signed by the Company's authorised persons and the Contractors. These Ex. M-6 to M-9 are admitted by the Contractors respondent No. 2 to 5 in their written statement clearly shows that there was a contract job with the factory which it gave to the contractors. These contractors employed their labours as their own responsibility and

in their mutual contract and terms and conditions of the employment. The respondent Company has nothing to do with the Contractors labours as stated by Shri Munna Shah, Time Keeper as MW-3 in his statement. The witness has stated in his statement that the contractors employed their own labours for doing of contractual job and they were paid by them. The contractors submitted their bills with the respondent No. 1 as shown Ex. M-17 (Page 23). The ESI and provident fund of the workmen were deducted from the bills of the Conractors as shown in Ex. M-18 to M-24. The witnesses further stated that the Company registered with the Labour Department for contractual labours. The witness as MW-3 produced all the Attendance and Wages Register of the Company from 1973 to 1979 wherein the names of the claimants did not appear anywhere. The copy of the certificate is Ex. M-25. He further argued that the fact there were contractors of the Company proved by an other witnesses. Shri Abdul Salam as MW-4, who has stated in his statement that he is working in the factory from the year 1973 and seeing the contractor's labours in the Company. Shri Siya Ram, clerk of the Contractors came as MW-5 also clear this fact that there were contractors in the factory and the contractors used to pay the wages to their labours and they were employed by them. He further argued that the witness Shri Nand Kishore, Assistant Accountant of the respondent Company as MW-6, brought the ledger of the Company in the court and shown and stated in the court about the deduction of ESI and provident fund statement in the contractors accounts. He further argued that one of the workman Shri Abdul Salam who is shown in Annexure 'A' at Sr. No. 7 has come in the court to depose that he had taken his all dues from Shri Ganeshi Lal, Contractor and he has no dispute with the respondent Company clear the fact that all the claimants are the labour of the Contractors not of the respondent No. I because one of the workmen when come and depose before the court that he had taken his dues from the contractor proves the whole lot of the workmen. He further argued that Shri Munna Shah as MW-3, Time Keeper of the respondent Company has stated in his statement that Shri Ilyas, Abdul Salam and Kailash, workmen are the contractor's labour and settled their case with them and the copy of the same Ex. M-26 to M-28.

The representative of the respondent No. I further argued that even the contesting workmen have admitted before the court as stated by Shri Dukhi Chaudhry as WW-1 in his cross-examination that he used to work at loading and unloading work was done by the Contractors clearly shows that all the workmen were employees of the contractors. The workmen came present in the court have stated in their statement that they did not get the appointment letters at the time of appointment and they were not given the attendance card or wage slip as given to the other workmen of the factory clear the very fact that they were employed by the contractors and not the respondent No. I. He further argued that the contractors have admitted this fact in their written statement that these workmen were employed by the respondent No. I through the answering contractors clear the whole position that these workmen were employed by the contractors as per mutual settlement with the company and which is clear in clause No. 4, 5 and 6 of the settlement. He further argued that the Labour Commissioner, Haryana, rejected the demand notice of the workmen considering that the workmen were the employees of the contractors which were not the party. So the reference cannot sent to the court,—vide Ex. M-14.

After hearing the arguments of both the parties and going through the file, it is clear to me that it is a reference of 24 workmen referred to me for adjudication out of which 14 workmen came to contest their case and rest of them did not appear and contest their case. The workmen who came in the court are as under :—

S/Shri—

1. Ram Bilas
2. Dharam Pal Singh
3. Sugriv
4. Hukam Singh
5. Rajinder
6. Jitani
7. Dukhi
8. Sita Ram
9. Joginder
10. Gajinder Singh
11. Lal Babu Shaha
12. Ram Lal
13. Lal Bahadur
14. Vijay Bhushan

The issue on which both the parties argued, I feel that the argument put forward by the representative of the respondent No. I have full force. The workmen could not prove these facts that they are employees of the respondent No. I by any way. The respondent No. I has proved by all means that the claimants were not employed by respondent No. I. The Contractors have also admitted this fact in their written statement that they are employer of these workmen. The workmen also give the hints in their statement that they are the employees of the contractors as stated by WW-1 and the statement of Shri Abdul Salam. When the demand notice is one, and the case of all the claimants are one and out of these workmen if workmen say that they were employed by the contractors and one more has settled his account with the contractor,—vide Ex. M-27, it clearly proves that they are not employees of the respondent No. I. The respondent No. I has produced the agreement between the contractors and the Company. The copy of the registration certificate with the Labour Department for the contract clearly proves that these were contractors with the Company and these workmen were employees of the contractors and not of the respondent No. I. So this issue is decided in favour of the workmen and respondent No. I and against the Contractors respondent No. 2 to 5.

ISSUE NOS. 2, 3 & 4

After deciding issue No. I for the relationship between the workmen and the respondent, the respondent No. I contested this reference that as the woskmen were the employees of the Contractors. So the question of termination of their services is for the respondents Nos. 2 to 5 and not for respondent No. I. The respondents No. 2 to 5 presented in the Court after receiving the notices and they filed the written statement. On the request and statement made by the workmen's representative, they were discharged from this case by my Learned Predecessor. But when I took the charge and the case came before me for hearing, I thought that the parties given in the reference should not be left like this and they be called. The notices were again sent to the respondents Nos. 2 to 5 and they presented through the representatives on two dates i.e. 18th September, 1981 and 25th September, 1981 and after that neither the respondents nor their representatives presented and the ex parte orders were made against them. So the respondents No. 2 to 5 choose not to contest this reference as they knew that the workmen are their employees as they admitted in their written statement that these workmen were employed by the Contractors for the work of the respondent No. 1 and they also admitted in their written statement that the workmen left their jobs of their own. So the question of termination is to be justified by the respondents No. 2 to 5 who have not contested the reference. So the terminations of services of these workmen are not justified by the respondents No. 2 to 5 and no evidence for other issues like issue No. 3 for self abandonment of services and gainfully employment issue No. 4 is produced by the respondents No. 2 to 5. So these issues are also decided in favour of the workmen and against the respondents No. 2 to 5.

After deciding these issues in fovour of the workmen and against the respondents No. 2 to 5, I hold that the workmen S/Shri Ram Bilas, Dharam Pal Singh, Sugriv, Hukam Singh, Rajinder Jitani, Dukhi, Sita Ram, Joginder Gajinder Snigh, Lal Babu Shaha, Ram Lal, Lal Bahadur and Vijay Bhushan are entitled for the reinstatement with full continuity of services and full back wages, because their termination was not justified by these respondents No. 2 to 5, I give my award accordingly. No orders as to costs.

Dated the 12th May. 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana.
Faridabad.

Endst. No. 1200 dated 2nd June, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947 with the request that the receipt of the above said award may please be acknowledged within week's time.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.